

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/04/2004

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P.No. 620 of 2004

R. Karthik .. Petitioner

-Vs-

1. The Dean
Stanley Medical College
Chennai - 600 001

2. The College Council
Stanley Medical College
Chennai - 600 001

3. The Chairman
Enquiry Committee
Stanley Medical College
Chennai - 600 001 .. Respondents

Petition under Article 226 of The Constitution of India praying for a
Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. G. Rajagopalan, Senior Counsel
for Mr. N. Damodaran

For Respondents: Mr. Rajasekaran, Special
Government Pleader (Education)

:ORDER

By consent of counsel for both sides, the writ petition itself is
taken up for final disposal.

2. The petitioner has come forward with this writ petition
praying for a Writ of Certiorarified Mandamus to call for the records relating
to the proceedings of the Dean, Stanley Medical College, Chennai - 1 in
Proc.NO.7681/ ME4/2003 dated 30-12-2003, the first respondent herein and quash
the same and consequently direct the first respondent to allow the petitioner
to attend the second year M.B.B.S. Course at the Stanley Medical College,
Chennai - 600 001 and to attend the examination.

3. The petitioner is second year M.B.B.S. Student in the

respondents College. In earlier occasion, on complaint from first year students, the respondents conducted an enquiry and found 11 students guilty of ragging and suspended them, who have approached the Secretary to Government, Health Department, who in turn directed to hold a denovo enquiry. In the denovo enquiry, the said students were found not guilty and the report was sent to the Secretary to Government, Health Department, which ultimately set aside the order of suspension. The petitioner has stated that he was not among the said 11 students and has nothing to do with the said charge of ragging since he gone to Palani during September and came back only at the end of that month. It is also further stated that the College was re-opened on 06-10-2003 and he attended the classes. Later, he met with an accident on 19-11-2003 and undergone treatment till 19-12-2003. While so, the third respondent directed the petitioner to appear before the enquiry committee on 03-12-2003 at 11.30 a.m. He also attended the enquiry and sought for copy of the complaint, but the third respondent failed to furnish the copy of the complaint against him. He also replied to the questions of the third respondent/Committee and denied the charge of ragging. Again, another letter dated 26-12-2003 was sent by the Viceprincipal of the College directing him to appear on 27-12-2003. He attended and was directed to give the names of the students who indulged in ragging during August 2003. One of the committee members informed that a student gave a complaint against him during September 2003 for indulging in sexual harassment under the pretext of indulging in ragging which was also stated to have denied by the petitioner. The petitioner requested the respondents to furnish the copy of the complaint. The petitioner's father also sent a letter dated 27-12-2003 requesting the respondents to furnish copy of the complaint, but nothing was served. The respondents have served the impugned proceedings dated 30-12-2003 and placed the petitioner under suspension for six months with effect from 30-12-2003 to 29-06-2004 and expelled from the hostel for the said period.

4. Mr. Rajagopalan, learned Senior counsel appearing for the petitioner advanced argument that the impugned order of suspension is illegal, arbitrary and violative of principles of natural justice. The initiation of proceedings was after a period of three months from the date of alleged incident and it is only a later thought actuated by malafide motive. It is further submitted by the learned Senior counsel that the enquiry was based on the complaint given by one Nithyanandam on 20-11-2003 only against the petitioner; in order to get over the departmental proceedings initiated by the Secretary to Government of Tamil Nadu, Department of Health against the first respondent for wrong action taken against 11 students, the impugned order has been passed on the basis of the resolution of the second respondent Council.

5. Mr. Rajasekaran, learned Special Government Pleader appearing for the respondents, relying on the counter submitted as follows:-

On 30-08-2003, the Dean in charge of Stanley Medical College constituted a Committee to enquire about the complaints of ragging dated 12-08-2003 and 26-08-2003. The office bearers of the students Council agreed that act of ragging has taken place, but none come forward to mention the names of the senior students indulged in ragging. Students who were severely ragged were not in a position to give the name of the senior students since

they are new entrants to the hostel where the incident took place, besides that afraid of telling the names. About 35 senior students were identified by the Committee after enquiry based on the version of the first year students. College Council unanimously decided that 11 students, who indulged in severe ragging must be suspended. Accordingly, they were suspended. On 20-11-2003, one Nithyanandam, first year student submitted a complaint to the Director of Medical Education (DME) stating that the petitioner only ragged him not the other 11 students who were suspended. Due to ragging incident, the said Nithyanandam sought transfer to other medical college and later he was accommodated in Kilpauk Medical College. Based on the complaint of Nithyanandam, the DME visited the medical college on 20-11-2003 for an enquiry. The photographs of about 15 students were produced and the said Nithyanandam identified the petitioner herein in the presence of Dean, DME and other College Council members. An enquiry was held on 03-12-2003 to give an opportunity to the petitioner. On that day the statements of the petitioner and Nithyanandam were also recorded. The reports were submitted to DME on 08-12-2003. Considering the said report, DME has pointed out that the petitioner has made a specific statement that almost all the seniors have ragged the first year students and he could identify those seniors indulged. Hence, the DME has referred the matter to the committee for making further enquiry. The enquiry was conducted on 27-12-2003. The petitioner and his brother and parents demanded the copy of the statement given by the petitioner and threatened the first respondent. The matter was placed before the College council meeting held on 30-12-2003, which consists of Dean, Vice-principal, Deputy Superintendent, HoD's, Professors and Readers. The College council unanimously resolved to suspend the petitioner. The learned Special Government Pleader denied the averment that the enquiry was conducted against the petitioner to get over from the action initiated by the Secretary to Government against the respondents pertaining to suspension of 11 students. The second enquiry was conducted based on the statement given by Nithyanandam. The complaint of Nithyanandam and the statements recorded clearly establish that the petitioner has indulged in ragging. The petitioner has not stated anything in his reply about his visit to the native during the relevant period. The learned Special Government Pleader submitted that necessary opportunities were granted to the petitioner before passing the impugned order and prayed for dismissal of the writ petition.

6. Mr. G. Rajagopalan, learned Senior counsel appearing for the petitioner relied on the following decisions:-

i) (S. Bright Singh Vs. The Bharathiar University, Coimbatore, rep. by its Registrar and others) 1994 Writ Law Reporter 768 - wherein in Para 9 it was held thus:-

"9. The third decision relied on by the learned Senior Counsel is the order of Bakthavatsalam, J. dated 27-02-1991 in Writ Petition 1506 of 1991 as confirmed by the Division Bench by the Judgment dated 20-03-1991 in Writ Appeal No. 370 of 1991. In Writ Petition 1506 of 1991, the Petitioner was issued a show cause notice, on 27-11-1990, framing three charges against him. The petitioner also submitted his explanation on 10-12-1990 and the grievance of the petitioner in that case was that his explanation was not considered before directing him to appear before the enquiry committee which according to the petitioner reveals the predetermined mind of the second

respondent, in that case to expel the petitioner. On the facts of that case, Bakthavatchalam, J found that the petitioner has been given sufficient opportunity to submit his explanation and that he has also given a statement before the enquiry committee practically admitting his guilt. In these circumstances, Bakthavatsalam, J found that the order of expulsion was not violative of the principles of natural justice and consequently dismissed the writ petition. The above Order in W.P. No. 1506 of 1991 was confirmed by a Judgment in Writ Appeal No. 370 of 1991 dated 20-03-1991. The principle laid down by Bakthavatsalam, J in WP No. 1506 of 1991 as confirmed in WA No. 370 of 1991 has no application to the facts of the present case, because, admittedly, the second respondent in the present case has not served any charge memo on the appellant and did not give an opportunity to the appellant to state his case with regard to the case put against the appellant. In these circumstances, inasmuch as no written charge memo was handed over to the appellant asking him to state whatever he had to state in writing in respect of the charges levelled against him and no opportunity was given to the appellant to meet the case put against him, we have no hesitation in holding that the order dated 08-09-1992, dismissing the appellant from the college was passed by the second respondent without fulfilling the basic requirements of the principles of natural justice and therefore, it is illegal and liable to be quashed. On a careful consideration of the minutes of the enquiry committee meeting held on 07-09-1992, the nature of the enquiry conducted, in the present case, and the materials available on record, we are unable to accept the contentions of the learned Senior counsel for the second respondent that there is substantial compliance of the requirements of the principles of natural justice before the second respondent passed the order dated 08-09-1992 and that the said order is not violative of the principles of natural justice and illegal. Point Number in is answered accordingly."

7. Mr. Rajasekaran, learned Special Government Pleader appearing for the respondents relied on the following decisions.

i) (Hira Nath Mishra and others Vs. The Principal, Rajendra Medical College, Ranchi and another) AIR 1973 SC 1260 - wherein it was held thus:-

11. Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavoury the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by

the Principal was a wise one. The Committee whose integrity could not be impeached collected and shifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done."

ii) (Leo Francis Xaviour Vs. Principal, Karunya Institute of Technology & another) 1992 (2) Law Weekly Page 642 - wherein this Court in Para 20 held thus:-

20. A similar ruling was given by Mohan, J in R. Satheesh (Minor) rep. by father and natural guardian C. Rajendran V. Director of Higher Secondary Education and others. The learned Judge held that in every case it cannot be insisted that there must be a memorandum of charge, an enquiry and a finding arrived at like a Court or a Judicial proceeding..."

iii) (M. Lakshmanan Vs. The Principal, Government Arts College (Autonomous)Coimbatore and another) 2000 Writ Law Reporter Page No.138 - wherein in Para 8, this Court held thus:-

"8. From the above, it is clear that if the students are found indulging in ragging, they are liable to be summarily dismissed from the college. There is no question of enquiry and notice in such cases of ragging. In this case, three Professors have given a written complaint and one Ganesan, counter signed by 43 students, have given a complaint against the petitioners for ragging. This has been placed before the College Council who have decided to dismiss the petitioners and issue their Transfer Certificates. The Petitioners and other students instigated to boycott the college for several days and on the advice of the revenue authorities, the parents were instructed to bring the Transfer Certificates of the petitioners for re-admission, but they have failed to avail of that opportunity. Even now, when suggestion was given to the students that they may be issued with the Transfer Certificate without being an order of dismissal and a stigma attached to them, they are not prepared to take that suggestion. On the contrary, they insisted that they must be admitted to the college. Considering the facts and circumstances, if the students are permitted to continue in the college, it will only further aggravate the indiscipline in the college, especially the menace of ragging."

6. I have considered the argument of counsel for either side and also the judgments relied on by them. The main contention of learned Senior counsel for the petitioner is the impugned order of suspension is violative of principles of natural justice since not even the copy of the complaint of Nithyanandam was served, no charges framed and opportunity of cross-examination of Nithyanandam was granted, hence the order of suspension is not valid in the eye of Law.

7. The facts of the case is one Nithyanandam, first year MBBS Student sent a complaint to Class representative stating that the petitioner ragged him severely during the month of August 2003. On receipt of the said complaint, the respondents have furnished photographs of 15 students including

the petitioner herein. Nithyanandam, after seeing several photographs stated that "I am not sure which one of the photo is the correct person. If this photo identified by me is Karthik it is okay otherwise I am not sure. I do not want to identify the wrong one. I have seen the person only two or three minutes in the dark in the terrace". The petitioner was also examined on 03-12-2003 and the petitioner denied the charges of ragging.

8. The enquiry committee submitted the report to the Dean wherein it is stated that 11 students have not seen the petitioner ragging Nithyanandam. The Dean forwarded the enquiry report to the DME for further direction. The DME ordered for another enquiry based on the statement of the petitioner that there was severe ragging in the hostel and almost all seniors have indulged in ragging by striking them with hockey sticks, sexual harassment etc., and he could identify them. On 23-12-2003, the Dean ordered the same committee to re-enquire the petitioner regarding the statement given by him during the previous enquiry. I have perused the files. On 27-12-2003, statement of the petitioner was recorded. The petitioner answered that "I have seen them (seniors) ragging but I do not know the names". For question about his memory, he answered 'the question appears stupid and teasing my mental health'. While giving statement on 27-12-2003, the petitioner requested the committee to furnish the copy of the complaint of Nithyanandam. On the same day, the petitioner's father stated to have misbehaved with the members of the enquiry committee, with the result, a complaint was lodged against him with the Dean. It is stated in the complaint that the petitioner's father abused the Committee members with unparliamentary words. After receipt of the committee's report, the Dean has placed the matter before the college council on 30-12-2003. The College council unanimously passed the impugned order of suspension.

9. On perusal of records, I am of the considered view that no case is made out against the petitioner by the respondents to justify the punishment. The second enquiry was ordered by the DME to collect details about the senior students, who indulged in ragging based on the contention of the petitioner, but the enquiry committee travelled beyond the scope of reference made by the DME and found the petitioner guilty.

10. The campus of educational institution is the place where the virtues of discipline and non-violence should be written as with a sun beam on every student's mind. Maintenance of standards of decency dictated by high moral sense is impossible unless the citizen have a sense of discipline. Where self-discipline and self-restraint do not prevail, Law has to step in and adjudication by Court is compulsory. The educational institutions like professional colleges facing the situation of raging year-after-year. We shall not allow educational institutions bids farewell to discipline. The authorities concerned should take all preventive steps in advance to avoid the brutal act of ragging.

11. Though the petitioner was absolved from all charges, his behaviour before the College council is not appreciable. Moreover, relying on his wrong statement, second enquiry was conducted which caused inconvenience to the respondents. Similarly, the petitioner's father also not conducted

himself properly, which is evident from the complaint made by the Council Members to the Dean. Of course, they could have acted unwittingly, however, in order to realise their mistake, I feel that both shall be directed to submit an affidavit of apology before the Dean, the first respondent herein. When this Court proposed the same, Mr. Rajagopalan, learned Senior counsel appearing for the petitioner, on instructions, agreed for the same.

12. Hence, the impugned order is set aside on condition that the petitioner and his father shall file an affidavit of apology to the Dean/first respondent herein within a period of seven days from today. It is made clear that any of the observations made by this Court cannot be taken as an adverse remark either against the petitioner or his father.

The writ petition is disposed of in the above terms. No costs.
Consequently, connected WPMP No. 634 and 635 of 2004 are closed.

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Index : Yes

Internet : Yes

To

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